No. 15,064

IN THE

United States Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM F. HOLCOMB and
IDRIS M. HOLCOMB,
Appellees.

On Appeal from the Judgment of the United States District Court for the Northern District of California.

BRIEF FOR THE APPELLANT.

CHARLES K. RICE,
Assistant Attorney General.
LEE A. JACKSON,
ROBERT N. ANDERSON,
JOSEPH F. GOETTEN,
Attorneys,
Department of Justice,
Washington 25, D. C.

LLOYD H. BURKE,
United States Attorney,
LYNN J. GILLARD,
Assistant United States Attorney.

INDEX

Citations

Cases

Statutes

No. 15,064

IN THE

United States Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM F. HOLCOMB and
IDRIS M. HOLCOMB,
Appellees.

On Appeal from the Judgment of the United States District Court for the Northern District of California.

BRIEF FOR THE APPELLANT.

OPINION BELOW.

The opinion of the District Court (R. 50-52) is reported at 137 F. Supp. 619.

JURISDICTION.

This appeal involves a claim for refund of income taxes, alleged to have been erroneously assessed and collected for the year 1951. The suit, in which the United States has been named as defendant, was in-

stituted in the United States District Court for the Northern District of California. Jurisdiction was conferred on that Court by 28 U.S.C., Section 1346. (R. 3-6.)

The taxpayers, William F. Holcomb and Idris M. Holcomb, filed separate income tax returns for the year 1951. The taxpayer, William F. Holcomb, reported in his separate return a net income of $53,887.39, and paid an income tax of $29,661.54. Subsequently, upon the audit of his return, his net income was determined to be $68,880.59, and an additional tax of $11,493.32 was assessed. On or about May 16, 1954, he paid this additional tax together with interest. The taxpayer, Idris M. Holcomb, reported in her separate return a net income of $1,553.31, and paid an income tax of $72.08, making a total of $41,226.94 in income taxes paid by both taxpayers for the year 1951. (R. 23-24.)

On June 23, 1954, within the period prescribed by Section 51(g)(3) of the Internal Revenue Code of 1939, the taxpayers filed a joint income tax return for the year 1951, showing a total income tax liability of $32,933.24. Concurrently with the filing of this joint return, within the period allowed by Section 322 of the Internal Revenue Code of 1939, the taxpayers also filed with the Director of Internal Revenue, San Francisco, California, a claim for refund of $8,293.70, with interest. (R. 7-10, 24-25.)

Not having received notice of a decision on their refund claim within six months after it had been filed, as prescribed by Section 6532(a)(1) of the Internal

Revenue Code of 1954,[1] the taxpayers on February 7, 1955, instituted this suit in the District Court. (R. 5, 19, 20.) The District Court's judgment in favor of the taxpayers, in the amount of $8,293.70, with interest, was entered on December 5, 1955. (R. 52-53.) A notice of appeal was timely filed on behalf of the United States on January 31, 1956. (R. 53-54.) Jurisdiction to hear and determine this appeal is conferred on this Court by 28 U.S.C., Section 1291.

QUESTION PRESENTED.

Whether under Section 51 of the Internal Revenue Code of 1939, the taxpayers were entitled to file a joint income tax return for the year 1951, notwithstanding the fact that as of the close of that year they were legally separated under an interlocutory decree of divorce.

STATUTE INVOLVED.

Internal Revenue Code of 1939:

SEC. 51. INDIVIDUAL RETURNS.

* * * * * * *

(b) [As amended by Sec. 303, Revenue Act of 1948, c. 168, 62 Stat. 110] *Husband and wife.*—

(1) *In general.*—A husband and wife may make a single return jointly. Such a return

---

[1]By ordinary mail, the taxpayers did receive a letter from the District Director, dated January 10, 1955, notifying them of the disallowance of their refund claim. (R. 16.)

may be made even though one of the spouses has neither gross income nor deductions. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

* * * * * * *

(5) *Determination of status.*—For the purposes of this section—

(A) the status as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

(i) if both have the same taxable year—as of the close of such year; and

(ii) if one dies before the close of the taxable year of the other—as of the time of such death; and

(B) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

* * * * * * *

(26 U.S.C. 1952 ed., Sec. 51.)

STATEMENT.

The facts as stipulated (R. 21-49) and found by the District Court (R. 50) may be summarized as follows:

The taxpayers were married on December 1, 1923, and lived together as man and wife until June 28, 1950. On or about the latter date, the taxpayers separated by mutual consent and executed a property settlement agreement. On or about August 13, 1951,

the Superior Court of the State of California awarded Idris M. Holcomb an interlocutory decree of divorce and approved the property settlement agreement. This decree became final on or about August 18, 1952. (R. 21-23, 50.)

The taxpayers filed separate income tax returns and paid income taxes totaling $41,226.94 for the year 1951. On June 23, 1954, they filed a joint income tax return for 1951, showing a total income tax liability of $32,933.24. On the same date they filed a claim for refund of the difference between this amount and the amount of income taxes paid, or $8,293.70, together with interest. Their claim for refund not having been allowed, this suit for refund followed. (R. 23-25, 50.)

Rejecting the Government's contention that the taxpayers were not entitled to file a joint return for the year 1951, because as of the close of that year they were legally separated pursuant to an interlocutory decree of divorce, and relying upon *Eccles v. Commissioner,* 19 T.C. 1049, affirmed *per curiam,* 208 F. 2d 796 (C.A. 4th), and *Ostler v. Commissioner,* decided July 25, 1955 (1955 P-H T.C. Memorandum Decisions, par. 55,207), the District Court entered judgment in favor of the taxpayers. (R. 51-53.)

STATEMENT OF POINT TO BE URGED.

The District Court erred in holding that the taxpayers, who as of December 31, 1951, were legally separated under an interlocutory decree of divorce,

were entitled to file a joint income tax return for the year 1951.

SUMMARY OF ARGUMENT.

The issue in the instant case and the issue in *Commissioner v. Ostler,* No. 14,984, now pending before this Court, are identical and the basic facts in the two cases are essentially the same. For reasons more fully developed in our brief in the *Ostler* case, the judgment of the District Court should be reversed.

ARGUMENT.

THIS CASE IS INDISTINGUISHABLE FROM COMMISSIONER v. OSTLER, PENDING IN THIS COURT, AND FOR THE REASONS THERE DEVELOPED THE JUDGMENT OF THE DISTRICT COURT SHOULD BE REVERSED.

The sole issue in the case at bar and the sole issue in *Commissioner v. Ostler,* No. 14,984, now pending before this Court on Commissioner's appeal, are identical—namely, whether under Section 51 of the Internal Revenue Code of 1939, *supra,* taxpayers are entitled to file a joint income tax return for a year at the close of which they are legally separated under an interlocutory decree of divorce. Noting that the issue in this case is the same as in *Ostler,*[2] the District

---

[2]The District Court further pointed out that a like issue was involved in *Eccles v. Commissioner,* 19 T.C. 1049, affirmed *per curiam,* 208 F. 2d 796 (C.A. 4th). A similar issue was also presented in *Evans v. Commissioner,* 19 T.C. 1102, affirmed, 211 F. 2d 378 (C.A. 10th).

Court held that the Tax Court's decision in the *Ostler* case should be followed. (R. 51.) We have developed in our brief in *Ostler* why the Tax Court's decision is incorrect and should be reversed.

The decision in *Ostler* and similar cases, as more fully demonstrated in our brief in *Ostler,* rests upon a fallacious premise—namely, that the privilege of filing a joint return afforded by Section 51 of the Internal Revenue Code of 1939 is not forfeited by spouses legally separated under an interlocutory decree of divorce so long as their marriage status has not been absolutely terminated. The statute, however, provides for forfeiture of this privilege by spouses "legally separated" under a decree of divorce or of separate maintenance. There is no provision that the spouses must be legally separated under any particular type of decree of divorce or that an interlocutory decree of divorce shall not be considered a decree of divorce. The legislative history of the statute confirms the conclusion that in restricting the privilege of filing joint returns Congress intended to cover situations in which spouses were not, as well as situations in which they were, absolutely divorced. A consistent and long standing administrative construction is in accord with such interpretation.

Accordingly, since the taxpayers in the case at bar were legally separated under an interlocutory decree of divorce at the close of the year 1951, they were not entitled to file a joint income tax return for that year.

CONCLUSION.

The judgment of the District Court is erroneous and should be reversed.

Respectfully submitted,

CHARLES K. RICE,
Assistant Attorney General.
LEE A. JACKSON,
ROBERT N. ANDERSON,
JOSEPH F. GOETTEN,
Attorneys,
Department of Justice,
Washington 25, D. C.

LLOYD H. BURKE,
United States Attorney,
LYNN J. GILLARD,
Assistant United States Attorney.

May, 1956.